IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16150 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEMCHANDBHAI SURABHAI & 2 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR NIRAV C THAKKAR for Petitioner(s) : 1 - 3.
MR DIPEN DESAI ASST GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 2.
DS AFF.NOT FILED (N) for Respondent(s) : 3,
MR AR THACKER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/10/2005

ORAL JUDGMENT

1. Rule. Shri Dipen Desai, learned AGP waives service of rule on behalf of the respondent Nos.1 & 2

and Shri Avinash Thakkar, learned advocate waives service of rule on behalf of the respondent No.3. With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

2. In this petition under Article 227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Gujarat Revenue Tribunal dated 27.10.2004 passed in Restoration Application No.TEN.DR.3 of 2004 in dismissing the same. Being aggrieved by and dissatisfied with the order passed by the Collector, Jamnagar dated 30.4.1996, the petitioners preferred Revision Application TEN.AR No.14 of 1996. It appears from the record and it is the case on behalf of the petitioners that they have entrusted the matter to one Shri Motichandani who was managing the affairs and they engaged his services, however, he did not remain present and therefore, nobody remained present on behalf of the petitioners on 15.10.1998 and the Gujarat Revenue Tribunal by its order dated 15.10.1998 dismissed the aforesaid

revision application for default. The petitioners preferred the restoration application being TEN.DR-3 of 2004 before the Gujarat Revenue Tribunal and requested to restore the main revision application to file and to decide and dispose of the same on merits. It was also further submitted that they are ready and willing to pay reasonable cost. As there was delay they have preferred application for condonation of delay also. The Gujarat Revenue Tribunal by its impugned order dated 27.10.2004 dismissed the aforesaid restoration application being TEN.AR No.3 / 2004 on the ground that there is long delay in filing restoration application which has not been satisfactorily explained and that even in the mean time, the Town Planning Scheme has been implemented and Final Plots have been allotted and according to the Tribunal and irretrievable situation appears to have been reached and the Tribunal was of the opinion that no useful purpose would be served by allowing the restoration application. Being aggrieved and dissatisfied with the order passed by the Gujarat Revenue Tribunal dated 27.10.2004 passed in restoration application being TEN.DR No.3 of 2004 in

dismissing the same, the petitioners have preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. The learned Single Judge of this Court while issuning the notice in the present Special Civil Application has passed the following order on 8.8.2005.

> “Learned advocate for the petitioners states that the land in question though has formed part of the town planning scheme, it is possible to identify the final plot which has to be given to the owners of the said land as per the Town Planning Scheme and such final plot is still vacant and not allotted to anyone. He states that if this information of the petitioners is found to be substantially incorrect, the petitioners would not be pressing the petition.
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> Notice returnable on 5th September, 2005.”

4. In response to the notice issued by this Court, Shri A.R.Thakkar, learned advocate appears on behalf of the respondent No.3 – appropriate authority under the Town Planning Act and has also submitted affidavit-in-reply. Shri Thakkar, learned advocate has submitted that against the original land bearing land survey No.97 paiki in finalized town planning scheme, F.P.No.46 and 49 are allotted and at present F.P.No.46 is in possession of the Public Works Department and the Final Plot No.49 there is encroachment by hutment dwellers on that land. It is also further submitted that in the re-distribution statement, the names of the petitioners as well as the original land owners are mentioned as owners. It is also submitted that on production of the proof with regard to ownership, as well as of submitting the necessary documents, possession of the F.P.Nos.46 and 49 can be allotted. In that view of the matter, it appears that it is not that an irretrievable situation has been reached. It prima facie appears that the petitioners had engaged services of one Shri Motichandani who was acting as their administrator and that said person neither remained present, nor

informed the petitioners with regard to the status of the case and even thereafter there was lack of communication on his part. As held by the Hon'ble Supreme Court and this Court in catena of judgments, normally the matters are to be decided on merits rather than dismissing the same on technical grounds with a view to see that there is no injustice caused to any party. It is regretable that the Tribunal has not considered the aforesaid aspect that on imposing of cost, whether revision application can be restored or not. Considering the above and the position of the land in question, it would be an appropriate and in the fitness of things to allow the present special civil application and restore the main revision application before the Gujarat Revenue Tribunal to file on imposing reasonable cost and directing the Gujarat Revenue Tribunal to decide and dispose of the revision application on merits so that the petitioners have fair opportunity to submit and contest their case properly.

5. For the reasons stated above, the petition

succeeds. The order passed by the Gujarat Revenue Tribunal dated 27.10.2004 passed in Restoration Application TEN.DR No.3 of 2004 is hereby quashed and set aside and the restoration application is allowed and the main revision application No.TEN-AR 14 of 1996 is hereby restored to its file and the Gujarat Revenue Tribunal is directed to decide and dispose of the said revision application in accordance with law and on merits. The petitioners are directed to pay an amount of Rs.15,000/- (Rupees Fifteen Thousand only) by way of cost to be paid to the Collector, Jamnagar within six weeks from today. Similarly, the petitioners shall also pay an amount of Rs.2500/- to the Jamnagar Municipal Corporation by way of cost of the present special civil application within six weeks from today. On non payment of the aforesaid cost within stipulated time, the present special civil application will be treated as dismissed and the order passed by the Gujarat Revenue Tribunal in restoration application will be restored.

Rule is made absolute to the aforesaid extent.

[M.R.Shah, J.]

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